

PUBLIC NOTICE

**US Army Corps
of Engineers®**

APPLICATION FOR PERMIT

Public Notice/Application No.: 2000-01878-MB
Comment Period: March 19, 2004 – April 18, 2004

Applicant

Exeter LXI, L.L.C.
Mr. Scott Stiteler
5215 N. Sabino Canyon Road, Suite 100
Tucson, Arizona 85750
(520) 529-6644

AGENT

WestLand Resources, Inc.
Mr. Chris Rife
2343 East Broadway Boulevard, Suite 202
Tucson, Arizona 85719
(520) 206-9585

Location

At the proposed 512 acre Sky Ranch residential development in unnamed washes south of Tangerine Road, north of Camino del Norte, west of Thornydale Road, and east of Camino de Oeste (Section 6, T12S, R13E), Marana, Pima County, Arizona. Flows from these washes eventually report to the Santa Cruz River. The project is in the Lower Santa Cruz River watershed.

Activity

To construct one culverted road crossing, expand an existing at-grade crossing, and install underground natural gas, sewer, electric, and water lines to provide access and utilities to new homes. For more information, see page 3 of this notice and attached drawings.

Interested parties are hereby notified that an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). Interested parties are invited to provide their views on the proposed work, which will become a part of the record and will be considered in the decision. This permit application will be issued or denied under Section 404 of the Clean Water Act (33 U.S.C. 1344).

Comments can be e-mailed to Marjorie.E.Blaine@usace.army.mil or mailed to:

U. S. Army Corps of Engineers
ATTENTION: Regulatory Branch (2000-01878-MB)
5205 E. Comanche Street
Tucson, Arizona 85707

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the Environmental Protection Agency (EPA) Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination - A preliminary determination has been made that an environmental impact statement is not required for the proposed work.

Water Quality - The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the Arizona Department of Environmental Quality. Section 401 of the Clean Water Act requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers.

Cultural Resources - The latest version of the National Register of Historic Places has been consulted and this site is not listed. The applicant conducted a Class III cultural resource survey of the property and no historic properties eligible for listing in the National Register were located. The State Historic Preservation Office concurred with the Corps' "no historic properties affected" determination on June 5, 2003. This review constitutes the extent of cultural resources investigations by the District Engineer, and he is otherwise unaware of the presence of such resources.

Endangered Species - Only 2 of the 20 special-status species listed for Pima County were determined to have a reasonable potential to occur within the project area: the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*; CFPO) and the lesser long nosed bat (*Leptonycteris curasoae yerbabuenae*). The Corps determined the proposed project will have “no effect” on the lesser long nosed bat and “may affect” the CFPO. Formal consultation under Section 7 of the Endangered Species Act for impacts to the CFPO and proposed critical habitat was initiated with the U.S. Fish and Wildlife Service (FWS) on January 8, 2004; a Biological Opinion (BO) was issued on January 28, 2004. The Corps reinitiated formal consultation on March 2, 2004 based on minor project changes and is awaiting a revised BO. The proposed project is not anticipated to affect any other federally proposed/listed species or their proposed/designated critical habitat. Guideline #3 of the *Guidelines to ensure the Nationwide Permit program will not adversely affect the cactus ferruginous pygmy-owl* states “The COE has determined it will assert discretionary authority and will require submittal of an individual permit application and initiate formal consultation for any proposed NWP project...” which may affect the CFPO.

Public Hearing - Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

The applicant proposes to develop Sky Ranch, a single-family residential subdivision, located in Marana (Figure 1). The project area encompasses approximately 512 acres, of which 34 acres are waters of the U.S., at an elevation of 2,540 to 2,660 feet on the southern bajada of the Tortolita Mountains sloping gently to the southwest. Vegetation onsite is typical Sonoran desert scrub including blue and foothill palo verde, whitethorn and catclaw acacia, cholla, creosote, desert broom, ironwood, ocotillo, prickly pear, and velvet mesquite. The project will consist of not more than 440 production lots on approximately 103 acres of developed land with the remainder of the property to remain natural open space. In order to avoid impacts waters of the U.S. to the maximum extent possible, residential development will be clustered in two areas: one within the western portion of the property and the second in a smaller area along the southeastern edge of the property. Figure 2 provides the proposed site plan. Impacts to waters of the United States (WUS) will occur in three areas as a result of the development of the project. Permanent impacts will occur to .08 acres within the project area as a result of constructing a culverted road crossing of an ephemeral jurisdictional wash (Figure 3). An additional .02 acres of permanent impacts to WUS will occur with the widening of an existing at grade crossing of Tangerine Road. Development of Sky Ranch will require the installation of on- and offsite utilities. The offsite, buried utilities will include new water, electricity, natural gas, and sewer services and will temporarily impact .25 acres of WUS. Onsite, buried utility construction will temporarily impact .06 acres of WUS. Upon completion of construction in WUS, all exposed areas shall be reseeded with a native seed mix.

Additional Project Information

The washes within the project area provide excellent corridors for wildlife and also function to transport sediment during runoff events. The Corps’ scope of analysis is limited to the utility and road crossings of jurisdictional waters of the U.S. Therefore, in order to address impacts of the overall

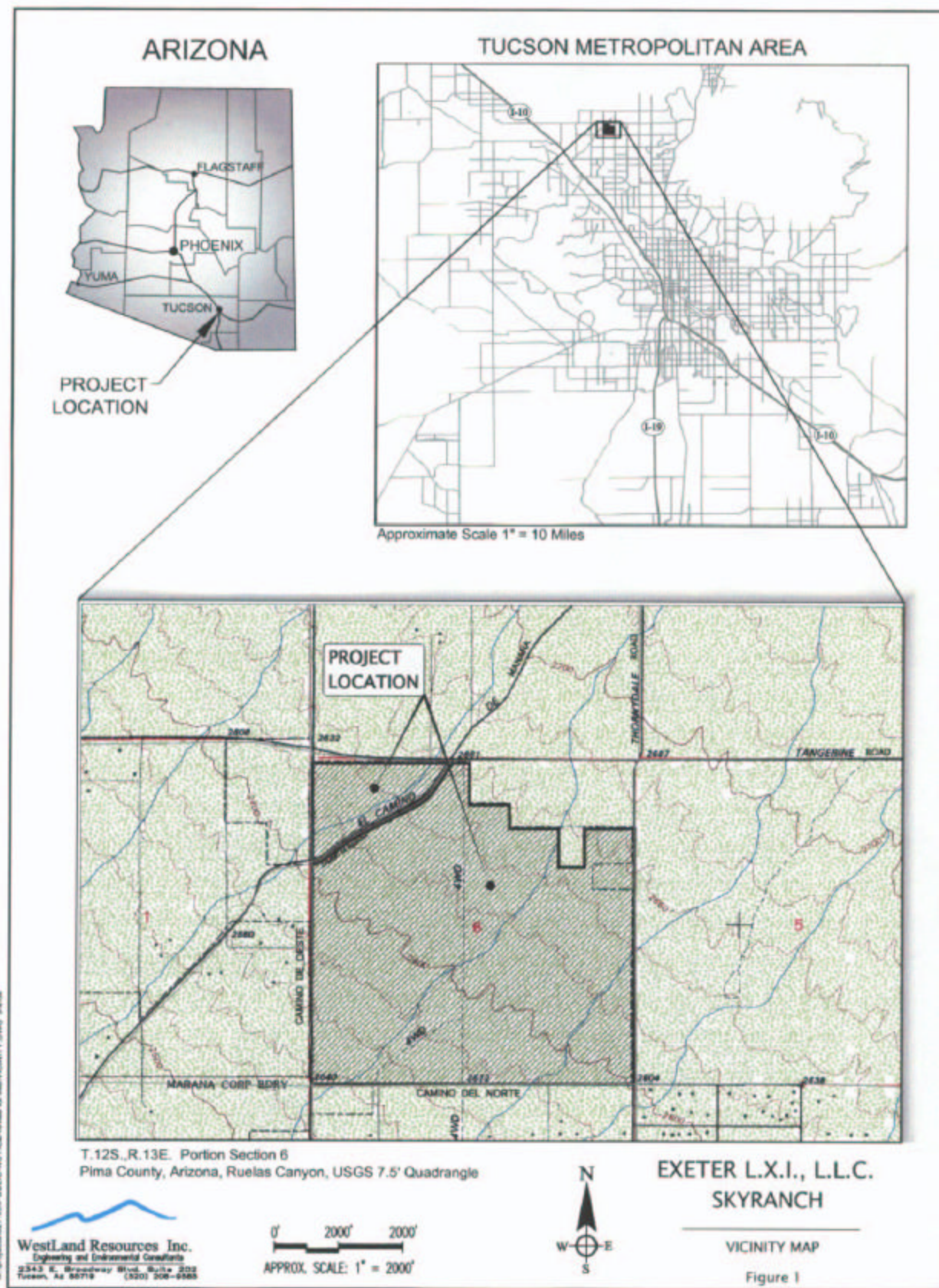
project to the CFPO, the applicant has worked with the FWS on a Habitat Conservation Plan/Environmental Assessment (HCP/EA). As a result of this effort, only 20 to 22 percent of the 512 acres will be disturbed by the project.

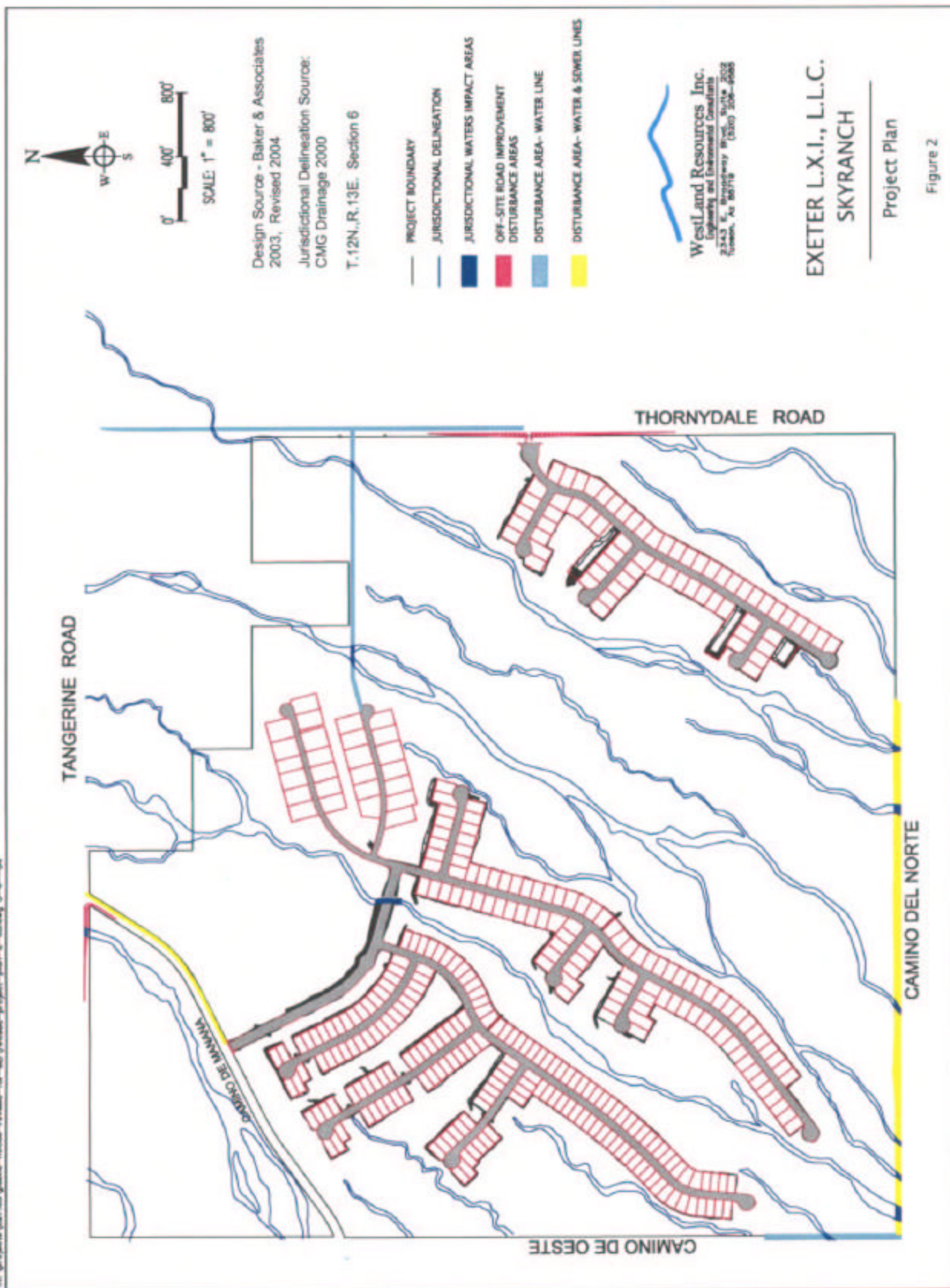
Proposed Special Conditions

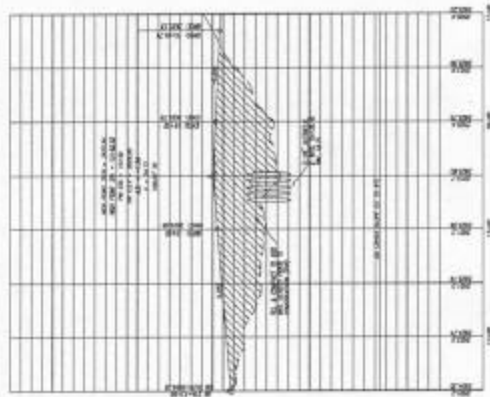
- a. The permittee shall comply with all requirements and conditions in the letter of Section 401 state water quality certification that the Arizona Department of Environmental Quality signed on _____. This certification demonstrates that the permittee has complied with Section 401(a) of the Clean Water Act. A copy of this letter is enclosed.
- b. Should cultural resources or archeological remains be encountered during construction/excavation, work shall immediately cease in the area of discovery. The permittee shall promptly notify the State Historic Preservation Office at (602)542-7137 and the Corps at (520) 584-4486.
- c. The permittee shall minimize disturbance to native vegetation.
- d. The permittee shall not stockpile material below the ordinary high water mark of any water of the U.S. except during the installation of buried utility lines. All material temporarily stockpiled during utility line construction shall be used as backfill and bedding or immediately hauled to an upland disposal site.
- e. The permittee shall perform work during low water conditions when the area is naturally dewatered and shall suspend all operations when there is water within the project area. The permittee shall not discharge fill or construction debris into the waters of any water of the U.S.
- f. The permittee shall immediately remove all excavated material not used as backfill and bedding to an upland disposal site.
- g. The permittee shall not divert flows outside of the ordinary high water mark of any water of the U.S.
- h. The permittee shall minimize the use of mechanized equipment below the ordinary high water mark. Mechanized equipment, including backhoes, shall be operated from the bank above the ordinary high water mark to the maximum extent possible.
- i. The permittee shall, immediately upon completion of construction of roads or installation of utility lines, reseed all exposed areas with a native seed mix.
- j. The permittee shall not excavate, fill, or grade in any watercourse outside of the minimum boundaries permitted for the road or utility line construction.
- k. The permittee shall not use areas below the ordinary high water mark as a fill source. Fill for roads shall come from a clean source outside of the ordinary high water mark which does not impact any watercourse.
- l. During construction, the permittee shall restrict vehicular traffic from entering any watercourse outside the minimum boundaries of those permitted for road or utility line construction.

- m. The permittee shall remove all excess fill and/or construction debris/equipment from the site immediately upon completion of construction.
- n. Prior to onset of construction/excavation, the permittee shall provide the contractor(s) with a copy of this permit. The contractor shall read and agree to comply with all conditions herein. A copy of this permit shall be posted on site at all times during construction.
- o. This Corps permit does not authorize you to take an endangered species, in particular, the cactus ferruginous pygmy-owl. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. an ESA Section 10 permit, or a BO under Section 7 of the ESA with “incidental take” provisions with which you must comply). The enclosed U. S. Fish and Wildlife (FWS) Biological Opinion (BO) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with “incidental take” that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with this Corps permit. However, the FWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA. For further clarification on this point, you should contact the FWS. Should the FWS determine the conditions of the BO have been violated, normally they will enforce the violation of the ESA or refer the matter to the Department of Justice.

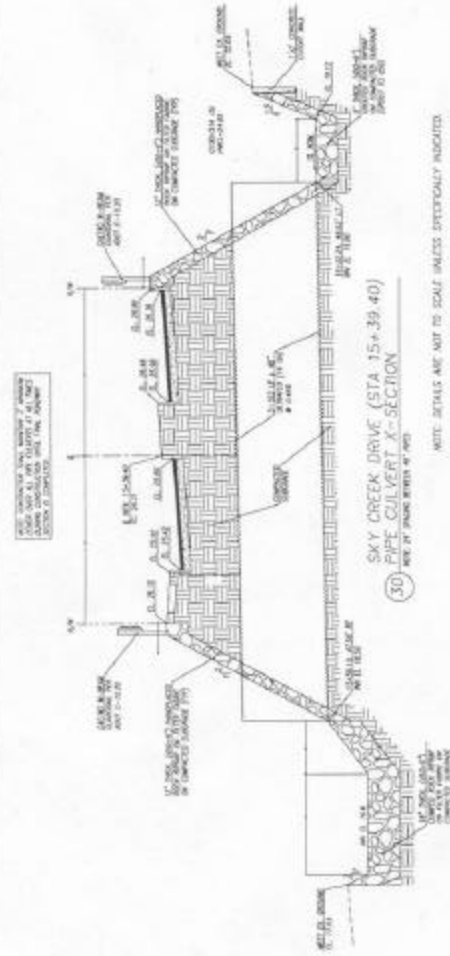
For additional information please call Marjorie Blaine at (520) 584-4486. This public notice is issued by the Chief, Regulatory Branch.



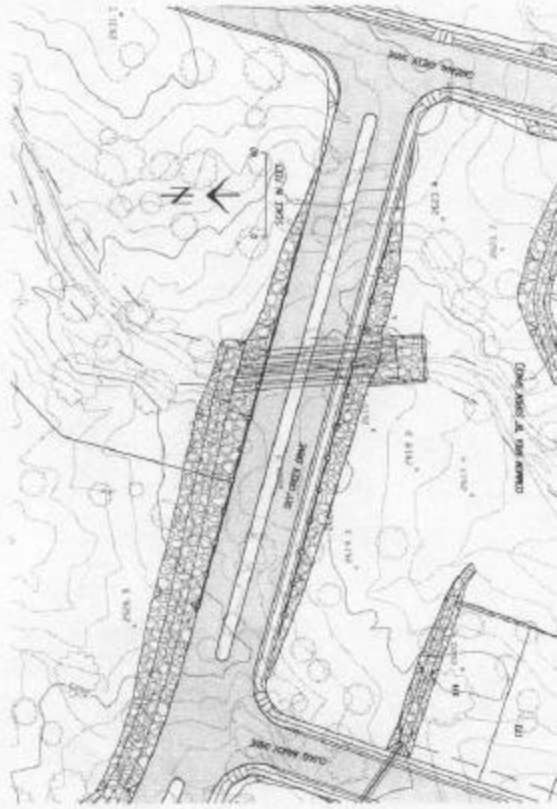




CULVERT CROSSING (LOOKING NORTH)



CULVERT CROSSING (LOOKING WEST)



SKY CREEK DRIVE PLAN VIEW



NOTE: NOT TO SCALE

EXETER L.X.I., L.L.C.
SKYRANCH

Plan View and Cross Section
for Sky Creek Drive

Figure 3

Design Source: Baker & Associates, Inc.

WestLand Resources Inc.
Engineering and Environmental Consultants
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Tucson, AZ 85718 (520) 298-9000